

## MEMORANDUM OF LAW

DATE: January 9, 1995

TO: Mayor Susan Golding

FROM: City Attorney

SUBJECT: Questions Concerning Municipal Advocates Ordinance  
Re: Scott Harvey

Your office has apprised this office of a general allegation that Mr. Scott Harvey, a candidate for appointment to the District Two vacant seat, has violated the San Diego Municipal Advocates Ordinance, San Diego Municipal Code section 29.0101 et seq. We have been furnished no specific instances but rather the general charge that Mr. Harvey has failed to list all his clients in his quarterly reports. (See Union Tribune article of January 9, 1995 attached.)

Given the generality of the allegation and the lack of time to investigate the past advocacy activities of Mr. Harvey, we provide you and the Council with the following review.

### DISCUSSION

We have reviewed sixteen (16) quarterly "Municipal Advocate Reports" filed between 1990 and 1994 which lists Mr. Harvey as a municipal advocate, with his place of business, a disclosure of "various clients" and seriatim checks that for the quarter he had no reportable activity, payments or expenditures. (See Quarterly Report of December 31, 1994 attached.)

Contrary to the general allegation that the ordinance "requires lobbyists to disclose their client lists quarterly," the Municipal Advocates Ordinance does not require a shotgun listing of all clients but is rather narrowly drawn to avoid unconstitutional overbreadth. Hence the disclosure reports are tailored to "advocacy," which is expressly defined:

(a) "Advocacy" shall mean any nonpublic contact with a municipal official made for the purpose of attempting to influence action taken on any municipal decision. Contacts made in the ordinary course of furnishing goods or services to the City in its role as a consumer of such goods or services shall not be deemed such contact as constituting advocacy. Contacts consisting solely of speaking at public meetings or

hearings before the Council or any board or commission or municipal official wherein personal disclosure becomes a public record or the sending of a written communication to the aforesaid officials which becomes part of the public record shall not be deemed a contact constituting advocacy, nor shall requests for information or the giving of technical information constitute or be deemed to be advocacy.

San Diego Municipal Code section 29.0103(a) ~~emphasis added~~.

Hence to the extent that Mr. Harvey's representation of any client consisted of public advocacy at Council or committee meetings, a listing of such clients on quarterly reports is not required. Further, nonpublic contacts are required to be reported only when certain threshold limits are involved. See Municipal Code section 29.0106 for limitations of \$100.00 or more received or \$25.00 of expenditures on one occasion or \$100.00 in the aggregate per quarter. In each report reviewed, Mr. Harvey has indicated these thresholds have not been reached. Indeed Section 29.0106(d) exempts the registrant from even filing quarterly reports where such thresholds have not been reached or exceeded.

#### SUMMARY

From the provisions of the Municipal Advocates Ordinance, it is clear that advocacy notification is confined to "nonpublic contact" and that reporting of such activity is required only when certain threshold limits are reached or exceeded. We have not been furnished with any information that would indicate that Mr. Harvey has not complied with these provisions. Of course, should further evidence be supplied, we will examine such in light of the requirements of the ordinance.

I trust these observations are of assistance in view of the time constraints involved.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:072(x043.2)

Attachments:2

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